

U.S. PTO Customer No. 25280

Case# 5668

REMARKS35 USC Section 103 Rejections:

The Advisory Action dated December 12, 2006 states that the following 103 rejections have been overcome. However, for the sake of completeness, Applicant reiterates the rejection and reply below.

Claims 7, 24-25 and 29-34 were rejected under 35 USC 103(a) as being unpatentable over Kimbrell Jr. et al. (US Patent Application Publication No. 20040137814A1).

Claims 7, 24-25 and 29-34 were rejected under 35 USC 103(a) as being unpatentable over Kimbrell Jr. et al. (US Patent No. 6,899, 923).

Claims 7, 24-25 and 29-34 were rejected under 35 USC 103(a) as being unpatentable over Kimbrell Jr. et al. (US Patent Application Publication No. 20040138083A1).

The Examiner states that these rejections may be overcome by showing that the references are disqualified under 35 USC Section 103 (c) as prior art in a rejection under 35 USC Section 103(a) as described in MPEP Section 706.02 (I) (1) and (I)(2).

Citing 35 USC Section 103(c), Applicant respectfully submits that the Kimbrell references are improperly used in forming the basis for these rejections. 35 USC Section 103(c) states:

"Patentability shall not be negated by the manner in which the invention was made. Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title,

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shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Applicant respectfully states that all of the Kimbrell references cited herein and the instant patent application were, at the time the invention was made, subject to an obligation of assignment to Milliken & Company. Additionally, Applicant respectfully states that the Kimbrell references qualify as prior art only under 35 USC Section 102(e).

Accordingly, Applicant respectfully submits that the rejections over the Kimbrell references are improper since they were subject to assignment to Milliken & Company at the time the invention was made. Thus, Applicant respectfully requests that the 35 USC Section 103(a) rejections over the Kimbrell references be withdrawn.

Double Patenting Rejections:

Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11-15 of copending Application No. 10/339,971.

Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of copending Application No. 10/340,300.

Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of copending Application No. 10/685,318.

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Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of USPN 6,899,923.

Applicant has submitted herewith two terminal disclaimers in order to overcome these rejections. Thus, Applicant respectfully submits that the double patenting rejections have been overcome.

Conclusion:

For the reasons set forth above, it is respectfully submitted that claims 7, 24 – 25, and 29 – 34 stand in condition for allowance. Should any issues remain after consideration of these Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

In the event that there are additional fees associated with the submission of these papers, authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

Respectfully requested,

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